IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4202 OF 2022
WITH
CIVIL APPLICATION NO.10179 OF 2022
IN WP/4202/2022

Shivaji Samarth Pethe,
Age : 46 years, Occu: Agri.,
R/o. Lakkad Jawalga,
Tal. Shirur – Anantpal,
Dist. Latur. ... **PETITIONER**

VERSUS

1. Dayanand Baburao Kumbhar,
Age : 41 years, Occu: Agri.,
R/o. Lakkad Jawalga,
Tal. Shirur-Anantpal,
Dist. Latur.
2. The District Collector,
Latur, Dist. Latur.
3. The Executive Engineer,
Rural Water Supply Department,
Zilla Parishad Latur.
4. The Deputy Engineer,
Rural Water Supply Department,
Sub-Divisional, Shirur -Anantpal
Tal. Shirur-Anantpal Dist. Latur.
5. The Block Development Officer
Panchayat Samiti, Shirur-Anantpal
Tal. Shirur -Anantpal Dist. Latur. ... **RESPONDENTS**

...
Advocate for Petitioner : Mr. V.D. Gunale
AGP for Respondent No.2: Mr. S.N. Morampalle
Advocate for Respondent No.3 : Mr. A.V. Hon
Advocate for respondent Nos.4 and 5 : Mr. P.R. Tandale
...

CORAM : MANGESH S. PATIL, J.

DATE : 14.07.2022

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. Learned AGP waives service for respondent No.2. Learned advocate Mr. A.V. Hon waive service for respondent No.3 and learned advocate Mr. P.R. Tandale waives service for respondent Nos.4 and 5. At the request of the parties, the matter is heard finally at the stage of admission.

2. The petitioner is questioning legality of the order passed by the Collector and the Commissioner in a proceeding under Section 16 of the Maharashtra Village Panchayats Act, 1958 (herein after 'the Act') holding him to have incurred disqualification under Section 14 (1) (h-1) of the Act.

3. The learned advocate Mr. Gunale would vehemently submit that it is not a matter of misappropriation. A water supply project was being implemented when the petitioner was Upsarpanch and a Chairman of the Jal Swaraj Committee which was to implement a water supply project funded by the Government. Though he along with the Secretary of that committee were held liable for the loss which was quantified as Rs.53,106/- by the Committee headed by the Chief Executive Officer on 11.03.2014, the petitioner had immediately made an attempt to deposit the money by way of a cheque on 06.04.2015 however, it was not encashed on the ground that the account was closed. Mr. Gunale would further submit that even otherwise, he had deposited the money with the concerned department of the Government on 29.11.2021 and even the concerned executive engineer had issued a no dues certificate which he has annexed along with the Civil Application. He would, therefore, submit that the ground for incurring a

disqualification under that provision has got wiped out and he should not be deprived of holding the elected post.

4. The learned AGP and the learned advocates for the other respondents would support both the orders.

5. Section 14 (1)(h-1) of the Act reads as under:

> ***"Section 14 (1)_*** *No. person shall be a member of a panchayat continue as such, who _*
> *(h-1) : Fails to pay the amount of surcharge or charge under Section 140 or the amount ordered to be paid under Section 178 together with interest, if any, within the period provided in that behalf, and where an appeal has been made, then within one month from the date of receipt of the decision rejecting such appeal."*

As can be seen from the wording, a person is liable to be disqualified under that provision if he fails to pay the amount of surcharge or charge under Section 140 or the amount ordered by the Collector under Section 178 of the Act.

6. Section 140 reads as under :

> ***" Section 140. Audit of account of Panchayats.*** *- (1) The audit of the accounts of a Panchayat shall be carried out [by such authority and] in such manner as may be prescribed and a copy of the audit note [shall be forwarded to [the Chief Executive Officer], the Panchayat Samiti and the Panchayat] within [two months] of the completion of the audit.*
> *(2) On receipt of the audit note referred to in sub-section (1), the Panchayat shall either remedy any defects or irregularities which may have been pointed out in the audit note and send to the [Panchayat Samiti] within three months and intimation of its having done so or shall, within the said period, supply to the [Panchayat Samiti] any further explanation in regard to such defects or irregularities as it may wish to give.*

(3) On receipt of such intimation or explanation, the [Panchayat Samiti] may in respect of all or any of the matters discussed in the audit note,-

(a) accept the intimation or explanation given by the Panchayat and recommend the [Chief Executive Officer] to [drop] the objection.

(b) [suggest] that the matter be reinvestigated at the next audit or at any earlier date, or

(c) hold that the defects or irregularities pointed out in the audit note or any of them, have not been removed or remedied.

(4) The [Panchayat Samiti] shall send a report of its decision to the [Chief Executive Officer] within one month of the date of receipt by it of the intimation or explanation referred to in sub-section (2), or in the event of the Panchayat failing to give such intimation or explanation on the expiry of the period of three months referred to in the said sub-section (2), or in the event of the Panchayat failing to give such intimation or explanation on the expiry of the period of three months referred to in the said sub-section (2), [and shall forward a copy of such report to the auditor and the Panchayat]. If the [Panchayat Samiti] holds that any defects or irregularities have not been removed or remedied, the [Panchayat Samiti] shall state in the report whether in its opinion the defects or irregularities can be regularized and if so, by what method and if they do not admit of being regularized, whether they can be condoned, and if so, by what authority. The [Panchayat Samiti] shall also state whether the amounts to which the defects or irregularities relate should in its opinion be [surcharged or charged] as hereafter provided.

[(5) The Chief Executive Officer may, after considering the report of the Panchayat Samiti and after making such further inquiry as he considers necessary, disallow any item which appears to him contrary to law and surcharge the same on the person making or authorizing the making of, the illegal payment, and may charge against any person responsible therefore the amount of any deficiency or loss caused by the gross negligence or misconduct of that person, or any sum received which ought to have been, but is not, brought into account, by that person; and may after taking explanation of such persons, direct by order in writing that such person shall pay to the Panchayat the amount surcharge or charged and where the Chief Executive Officer considers it necessary, also an interest on the amount so surcharged at such

rate as may be determined by him. If the amount or interest directed to be paid by the Chief Executive Officer under his order is not paid by the person aforesaid within one month from the date of receipt of such order by him, the Chief Executive Officer shall request the Collector to recover it as an arrears of land revenue and credit it to the village fund, and thereupon the Collector shall be bound to do so.

(6) Any person aggrieved by any order of [surcharge or charge or interest thereon] made by the [Chief Executive Officer] under this section, may, within one month from the receipt by him of the decision of [Chief Executive Officer], apply to the District Court to modify or set aside such order, and that court after taking such evidence as it thinks necessary, may confirm, modify or remit such [surcharge or charge or interest thereon] and make such order as to costs as it thinks proper in the circumstances."

Admittedly, the Committee headed by the Chief Executive Officer of the Zilla Parishad had passed the order expressly directing a charge on the petitioner's property to the tune of Rs.53,106/- on 11.03.2014. It is the case of the petitioner that he had made an attempt to pay that money but the cheque was not allowed to be deposited and encashed as the account was closed. The fact remains that even according to him he did not deposit the money thereafter till he deposited it on 29.11.2021. Consequently, it is quite apparent that the necessary ingredients for attracting the disqualification under Section 14 (1) (h-1) was writ large.

7. Pertinently, the Collector had passed the order under Section 16 on 28.10.2021 and it is thereafter that the petitioner has made the latest deposit in November 2021. It is thus quite clear that he had made such deposit after he was held to have become disqualified and even the vacancy was declared.

8. Needless to state that the disqualification contemplated under Section 14 (1) (h-1) of the Act is automatic. No sooner a ground which is required for the disqualification occurs created a person becomes disqualified automatically. It is only the declaration of the vacancy which takes place in a proceeding under Section 16. Consequently, even if the petitioner has now deposited the money it was deposited after the Collector had passed the order and would not come to his rescue and obliterate the ground for disqualification *ex post facto*.

9. The Writ Petition is dismissed. Civil Application is disposed of.

10. The Rule is discharged

(MANGESH S. PATIL, J.)

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